EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CRAIGVILLE TELEPHONE CO. d/b/a ADAMSWELLS, and CONSOLIDATED TELEPHONE COMPANY d/b/a CTC, Plaintiffs, vs. T-MOBILE USA, INC., and INTELIQUENT, INC., Defendants.	No. 19 C 7190 Chicago, Illinois September 15, 2021 10:38 a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HON. JEFFREY T. GILBERT, MAGISTRATE JUDGE

APPEARANCES:

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For Defendant Inteliquent:
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Also Present:
MR. RICHARD L. MONTO

(Telephonic proceedings on the record.)

THE CLERK: 19 Civil 7190, Craigville Telephone Company, et al., versus T-Mobile USA, Incorporated, et al.

THE COURT: Okay. Good morning, everybody. This is Judge Gilbert. We're doing this remotely. We are on the record in the courtroom as well. So I'm going to ask for appearances for everybody, first for plaintiffs and then for defendants. Then please, please, please try and remember that before you speak, state your name so that if a transcript is prepared of this hearing the court reporter will know who is speaking and can record that in the transcript. So let's go first with appearances for plaintiffs.

MS. HINGER: Good morning, Your Honor. This is Cathy Hinger from Womble Bond Dickinson appearing for the plaintiffs. I believe on the line are my co-counsel David Carter, Kurt Weaver, Victoria Bruno, Katie Gallagher, and from the law firm of Chapman & Cutler David Audley and Mia D'Andrea, and I will be addressing the Court this morning. Thank you.

THE COURT: Okay. If the other people on plaintiffs' counsels' side want to be reflected as having attended this hearing if a transcript is prepared, you should send or Ms. Hinger should send in an email to Brenda copying the other side just giving those names again so that she can forward them to any court reporter that might be transcribing this.

Okay. On the defense side?

MR. MERVIS: Good morning, Your Honor. This is Michael Mervis of Proskauer Rose for T-Mobile. With me on the line are my colleagues Balda Vinti and Tiffany Woo. I expect that I will do most, if not all, of the talking for us, but there may be particular questions that the Court has that would be better suited for Ms. Woo, and I think it will be the two of us.

THE COURT: Okay, same directive to you. Also, Mr. Mervis, if you're the one that's going to be doing the speaking, I can barely hear you. I don't know if you're on a speaker phone or --

MR. MERVIS: Your Honor, I apologize. I'm on a landline, but let me just take off my headset and do it the old-fashioned way.

THE COURT: Okay.

MR. MERVIS: Your Honor, is this better?

THE COURT: That's much better.

MR. MERVIS: Okay. Apologies for that.

THE COURT: No, no need to apologize.

Then for Inteliquent?

MR. HAMILL: Good morning, Your Honor. This is John Hamill. I'll plan to do most of the talking. Also on the line are Michael Pullos and Richard Monto, and we understand your instruction about the transcript.

THE COURT: Terrific. Okay. The only glitch in that

is that if you end up clicking, you know, the link on my web page to get the transcript, I'm not 100 percent sure that you will get contacted by a court reporter. We probably will because they ask us if we want a copy. All right. Never mind.

All right. So let me just give you a sense of where I am on this, and then I will hear from you on certain things. I've read everything that I think I need to read pretty thoroughly except for the confidentiality orders, the eight different documents that both sides sent to my proposed order file and to my courtroom deputy yesterday just before 6:00 p.m. I'm prepared to address that, but I have not fully digested everything in all of the documents that you sent that late in the hour.

But I am aware of the motion to compel in the WBK case. I am aware of plaintiffs' suggestion that I hold off on that, but I know the motion to compel is fully briefed. I'm aware of plaintiffs' suggestion that I hold off on that fully briefed motion for a couple of weeks in order for the parties that are interested in that issue, probably T-Mobile as well, file a status report in two weeks which is September 30th. I don't recall whether T-Mobile said that was good with them or not. WBK is not a party to the status report necessarily. Is WBK on the line as an interested observer?

(No response.)

THE COURT: Okay. But I'm prepared to set September

30th per your request for that status report. Is that okay with T-Mobile's counsel?

MR. MERVIS: Yes, Your Honor. Sorry. Michael Mervis. Yes, Your Honor.

THE COURT: Thanks. Okay, done. I'm prepared to address the confidentiality orders, too, but let me hold that to the side for a second. As I said, I looked at them quickly. I'm going to see whether or not you could tell me -- I'm going to have some of those red lines up on my screen. If you could tell me in short order what the nature of the remaining disputes are, I might be able to address them today. Otherwise, because you sent that at such a late hour, as I characterized that, because you sent that at such a late hour, I'll set another hearing next week to address that if I need to have any more research or inquiry.

You had a question in your joint status report about whose case procedures apply here. My case procedures are going to apply to matters in front of me. I know Judge Lee ordered you to do joint status reports. My website, if you've been to it, suggests joint status reports and joint motions, you know, motions to resolve a discovery dispute.

Really, let me strike that. It's really inquiring about the joint motion to resolve a discovery dispute rather than joint status reports. I like joint motions to resolve discovery disputes. Sometimes they take longer to put

together, but like what you gave me in that omnibus joint status report, at least it gives both sides' positions. But also like that joint status report you gave me, sometimes there's information missing that you might have had in a separate motion.

I would prefer that issues get fronted to me the way you have been fronting them or you have fronted them with Judge Lee, which is a joint motion to resolve a discovery dispute. If that becomes unwieldy or problematic you just can't talk to each other, I can revisit that. But at present, if you're going to tee something up to me in terms of a discovery dispute, for example, if you have issues after you've met and conferred about the outstanding issues on written discovery, I do like that joint motion.

Just the process of putting that together often allows the parties in my experience in the past 11 and a half years to resolve some issues that they would not necessarily have resolved in the traditional motion-response-reply. What sometimes happens, particularly with voluminous discovery disputes, is I get a motion and then the response says: Well, we can agree to that, and we can agree to that. You didn't tell us about this, and it's not an issue.

That's a lot of empty noise, so if you can put something together where both sides are exchanging drafts and see what the other side is going to say and you could respond

to it, I'd prefer that. So that's a long -- I think that's a long answer to the question you posed. I will say in my order that the Court strongly prefers any discovery disputes to be raised with the Court in the form of a joint motion to resolve such disputes. If that becomes problematic in the future, the parties should bring that to the Court's attention.

Is that okay with plaintiff or plaintiffs?

MS. HINGER: Your Honor, this is Cathy Hinger. Yes, I would also suggest that perhaps to help things along that we could have in that order some kind of timeframe in which one party responds to the other, so the party that raises the discovery disputes. Some of the challenges that we've had is we'll prepare, you know, a proposed joint filing, and then there's no deadline by which the other side needs to respond with their position, and we are concerned about timing.

So perhaps if there could be a five-day limit on the response by the party, or three days if you think that's appropriate, but something that keeps the process moving, because otherwise sometimes I think the joint status report can drag on when we don't have any guideposts for that.

MR. MERVIS: Your Honor, it's --

THE COURT: Well --

MR. MERVIS: Oh, I apologize. Michael Mervis for T-Mobile.

THE COURT: Three days is too short. Five days is

potentially more reasonable. This is just emblematic of what I see in this case. I'm not opposed to doing that. I would also say, you know, I would say that if I'm going to impose a period of time to respond, you know, we're all used to those in the sense of a confidentiality order and confidentiality designations and all of that. We're used to a time period to respond, so I would make it mutual.

So, for example, when the party raising the dispute feeds it over to the other side, absent agreement of the parties, the other side should respond in five days. Then I'd say, you know, the first party has five days to respond to what they get from the other side, too, because what's good for the goose is good for the gander.

T-Mobile might say it's not necessary to micromanage this, but looking at your docket and the kinds of disputes that have been raised up until now, I think Ms. Hinger's suggestion, because of an inability to agree on anything in this case, is not a bad one.

Mr. Mervis?

MR. MERVIS: Yes, Your Honor. So I'm going to try very hard throughout this conference not to ascribe blame to one party or the other. I don't think we have a conceptual problem with the idea of time limitations. I do want to say that I don't believe that that has been an issue on our side at all, but I don't have a conceptual problem with time

limitations. Understanding Your Honor's preference for joint reports, I think it might depend in part on what the nature of the dispute is in terms of what the time limitations should be, but conceptually we don't have an issue with that.

THE COURT: Mr. Hamill, do you want to weigh in one way or the other?

MR. HAMILL: Your Honor, John Hamill speaking. We agree with Mr. Mervis.

THE COURT: Okay. Well, we're talking about two different things here. Okay? I mean, I will say to you that I don't like resolving disputes like this, but my likes and dislikes are irrelevant here. If I have to ride herd on a case, then I'll ride herd on the case. We're talking about two different things here, a joint status report and joint discovery motions, just to be clear. Okay?

I am going to -- and I don't know if we should do this in a minute order, Brenda, or we may have to put this in a separate order. In fact, we probably should put it in a separate order. So the first line in the order is, you know, the parties shall file a joint status report on September 30th. Well, let me just say this. Plaintiff T-Mobile and WBK shall file a joint status report September 30th concerning their efforts to resolve the pending motion to compel in the case that was just moved over to this case. I don't know what the case number of that is.

The second line will be, as the Court said on the record, the Court strongly prefers a joint motion -- strongly prefers joint status reports and joint motions to resolve discovery disputes, if at all possible. Plaintiff is responsible for preparing the first draft of any joint status report that the Court -- or plaintiffs are responsible for what the Court will require in the future.

THE CLERK: Sorry, Judge. You're breaking up just a tiny bit. Sorry.

THE COURT: Can you hear me better now?

THE CLERK: Yes, yes.

THE COURT: Plaintiffs are responsible for preparing the first draft of any joint status reports that the Court will require in the future. Defendants shall provide their response and proposed additions to plaintiffs' draft within 72 hours of receiving the draft from plaintiff -- plaintiffs. The parties shall work together in good faith to finalize any joint status report.

In the next paragraph or in that one, I don't care, your choice, the Court strongly prefers joint motions -- and this may be duplicative, Brenda, with the other -- joint motions to resolve discovery disputes in the future. The aggrieved party in that situation will provide a draft of the joint motion to the other side after the parties have complied with Local Rule 37.1 or 37.2, whatever. I don't know. I have

a block on that. It's 37.2, I think. The other side shall provide its portion of the joint motion within five days. For these purposes, I might say including weekends unless I get a big objection to that, but within five days of receiving the initial draft. So by 5:00 p.m. on the fifth day so you don't have a dispute what the timing is. The parties shall work together in good faith to finalize any such joint motion so that it can be filed within seven days of an opposing party's response, absent agreement of the parties to a different schedule.

Is that sufficient for you, Ms. Hinger, at this point?

MS. HINGER: Yes. Thank you, Your Honor.

THE COURT: Is that okay with Mr. Mervis subject to the objection that you don't need this at all?

MR. MERVIS: Well, I'm not sure. I didn't say we didn't need it. I think it could be helpful, Your Honor. But, no, I don't have an objection. I think the only question -- and I understand Your Honor's comments about the weekend.

THE COURT: Let me interrupt you. I'm fine to say five business days if you want to say that.

MR. MERVIS: Yes, that's where I was going, Your Honor.

THE COURT: Okay. Fine.

MR. MERVIS: I think it --

THE COURT: Fine, fine, fine, fine, fine, fine.

(Inaudible) will be interesting on that. Fine, five business days.

MR. MERVIS: Thank you, Your Honor.

THE COURT: Mr. Hamill, you're okay with this? You don't have to agree to it, but you don't have anything further to say on it?

MR. HAMILL: John Hamill. That's correct, Your Honor.

THE COURT: Okay. Again, holding aside the confidentiality order, I don't think there's anything more on the case procedures that needed to be discussed. I mean, basically my case procedures apply to things in front of me. Okay? Judge Lee's procedures apply to things in front of him, and you should be able to -- and they're probably not that different, but you should be able to figure that out.

If there are any questions about that, file something. You know, ask. I'd prefer frankly things to be filed of record and not inquiries sent to my courtroom deputy or to me via email. I don't like having to litigate cases via email when they should be litigated on the public record. So, you know, if you have something you want to raise with me other than, you know, you can't make the telephone conference on this date, you know, you need to file it. A lot of judges are okay with letters and emails to courtroom deputies and even to them themselves for certain judges, but I'm not big on that.

Okay, scheduling issues. T-Mobile says it will amend

its initial disclosures and discovery responses by September 22nd. That's at page 7 of your last joint status report. It's ECF 150. I mean, that's fine with me. To the extent plaintiffs would object and say they want it a week earlier, I wouldn't do that, so I accept that date.

My question is: Should I set the same date for Inteliquent? I know you have different discovery issues and different responses and also I saw your motion for judgment on the pleadings, but if there's going to be supplementation here I'd like to set a date for that to happen. Can you live with the T-Mobile date of 9/22, or do you want a different date, Mr. Hamill?

MR. HAMILL: John Hamill speaking. That date is fine, Your Honor. I'm not sure we will have any amendment, but that date is fine.

THE COURT: Right, I noticed that. Okay. So I'll set that date in the order for defendants to serve any supplements they intend to serve to their initial disclosures and on written discovery.

Inteliquent wants sequenced discovery. I'm not really sure what that means. I know what you -- I think what you mean is discovery that is aimed at trying to put issues, the case-dispositive issues potentially earlier rather than later. You know, I don't know how I feel about this because I don't have any specifics, and you also have a motion to get yourself

out of the case completely.

So I guess given my lack of information as to what sequenced discovery means here, I know Judge Lee did not -- I read the transcript of his hearing. I know he did not bifurcate the class and merits discovery and, therefore, going forward I know Inteliquent has some issues that are different than T-Mobile's, many-slash-most of which have been raised in their motion for judgment on the pleadings.

I'm not prepared to say yea or nay about sequenced discovery. It seems you've got to talk about it and have to see what it is you're looking for. Obviously Ms. Hinger is going to say she wants to go full bore ahead because we've been delayed from everything I've read in the joint status report. So I would look at any issue that anybody raises in front of me, but I'm not going to say yea or nay on that now.

Plaintiffs proposed a three-month extension to all dates that have been set. That's really a kick-the-can-down-the-road request, but the defendants don't really disagree except for Inteliquent's objection to moving the date to amend pleadings. That's a date in front of Judge Lee, and I will not move that date. So if you want to seek relief from that date, that would have to go to Judge Lee because he deals with issues relating to the pleadings.

But based on the parties' agreement, I will grant the parties' joint request for a three-month extension to the

discovery dates, and that was, I think, in your joint status report. I'm stressing it and I may even put that in the order, the kick the can down the road. I normally don't like to just kick cans down the road when I extend discovery dates. I recognize that, you know, motions are pending. You know, this would just be -- you don't have any expert disclosure dates yet, do you, Ms. Hinger?

MS. HINGER: This is Cathy Hinger. No, Your Honor.

THE COURT: Okay. So it would really just be a closing of fact discovery date, and other expert disclosure dates would be set in a future order. That's fine with me, you know, but normally in the future when I extend dates, I want to know what's going to happen during that time period, how many depositions does each party want to take, where are we on document production, how much more document production has to happen, where are we on discovery issues and what has to be resolved there.

So when I extend a fact discovery date or the date for disclosing experts, I'm doing it advisedly. I've got the parties telling me they think they can get something done within a period of time, and then I hold you to it. Until I enter an order saying final extension and no further extensions will be granted in capital letters, I'll entertain good faith extensions or motions for extensions.

This one is a freebie because I'm just getting into

the case and you've agreed to this, but the fact that you agree in the future doesn't necessarily mean that I will move the discovery close date of 12/15 three months after that to probably March 15th. But I'm not moving the date to amend the pleadings. If that date needs to be moved, that motion should be filed before Judge Lee.

I'll put that in my order, too, Brenda. If anyone plans to change the September 30th, 2021 deadline to amend the pleadings, the joint parties' relief or any relief from that order needs to be set by the district court.

Plaintiff suggested a discovery status report in 30 days. That would make it about October 15th. That's okay with me since both defendants are purportedly going to be updating on September 22nd their disclosures and responses to written discovery. I don't think -- well, defendants take no position on timing, but they don't object to that date. I'm agnostic. I mean, I think that's fine. It might be aggressive. It might be too early. If it is too early, I would move it. But as of now, unless T-Mobile and Inteliquent object to that, I would say you could file that status report in 30 days. I could also push it a week to October 22nd because of this new requirement of five days, three days, midnight, whatever.

So with that, too, Mr. Mervis, do you want to weigh in on that?

MR. MERVIS: Yes, Your Honor. I actually think it

would make sense to push it a week. I mean, you're right. We basically said we don't have a position on this, that it's really at the Court's discretion. But I think five weeks is probably more sensible than four.

THE COURT: Do you agree, Mr. Hamill?

MR. HAMILL: John Hamill, Your Honor. Yes, that's fine, five weeks.

THE COURT: Okay. Can you live with that, Ms. Hinger? Uh-oh. Hello? (Inaudible.)

MR. MERVIS: We hear you, Judge.

MR. HAMILL: We're here.

THE COURT: Oh, so you heard my swear word, too. Okay. Sorry. I thought I just got cut off.

MR. MERVIS: We didn't hear that. You're not the first and you won't be the last during this COVID period.

THE COURT: The (inaudible) wasn't flashing like in the Supreme Court. Sorry. I heard beeps on my end, and I thought I had pressed the button to disconnect. So I guess I hadn't. I'm connecting through my computer with the new technology, and I'm not that familiar.

Okay. Ms. Hinger, are you okay with the 22nd?

MS. HINGER: This is Cathy Hinger. Yes, but I'll just note, Your Honor, that I think a lot is going to happen between now and then, and setting a deadline of September 22nd on any changes to the objections that have been raised on document

production, sort of the next question is: When will the defendants start producing documents?

So we asked for the 30 days because if we don't start getting documents, we want to have an opportunity to revisit that because I anticipate after the 22nd we'll do a meet-and-confer on the remaining document objections. Then if we're not starting to get documents within 30 days after these discovery requests have been pending since March, we're just looking to make sure that we have the opportunity to get a production schedule going. So I'm happy to defer to Your Honor, but those were our concerns.

THE COURT: Okay. Well, I might suggest to you, good-naturedly I think at this point, that if you -- the production of documents from everybody depends on the entry of a confidentiality order that you've been discussing amongst yourselves for months. So if you wanted me to be able to enter an order today fully advised, I would have suggested to both parties that I get your proposed language earlier than just before 6:00 p.m. last night. I was not in chambers. I actually had an event that I had to attend, so I was not able to look at that stuff.

So I hear you. I will accommodate -- well, number 1, what I was going to say is that if dates that I set don't work, you can always file a motion. I could also set a status, just a telephone status hearing in the case in the next 30 days on

October 15th. Let me see if that works. Then you don't have to file a motion if somebody needs more time or you haven't gotten the documents yet.

MR. MERVIS: Your Honor, it's Michael Mervis. Can --

THE COURT: Yes, you can respond. Hold on for one second, though.

MR. MERVIS: Yes, sure.

THE COURT: I tend to have or I can have, if I need to, a heavy hand on case management.

Mr. Mervis?

MR. MERVIS: Yes, Your Honor.

THE COURT: Go ahead.

MR. MERVIS: I was a little surprised by Ms. Hinger's comment because we told her that we're prepared to produce or to begin our production as soon as the confidentiality order is entered. I believe that she said the same thing about plaintiffs' production, which would be the first one that actually produces documents that are plaintiffs' as opposed to other parties.

THE COURT: Well, let me interrupt you. Let me interrupt you. I'm going to interrupt you because I have an 11:15 hearing scheduled on motions. I hear what you're saying. I don't think she's walking away from that at all, but I don't know when I'm entering the confidentiality order.

MR. MERVIS: Understood.

THE COURT: So I think her proposal, her proposal of a status in 30 days was premised on my entering a confidentiality order today and defendants doing what they said they were going to do, which is to immediately produce their documents and plaintiffs immediately producing their documents. Then depending on when I enter my order, that production will occur, but I'm not sure how soon after the order is done. So, you know, I'm happy to provide some landmarks here. Then if they have to change, they're going to change.

So I think I've correctly characterized your position, Ms. Hinger? Just a yes or a no.

MS. HINGER: Yes, Your Honor. Thank you.

THE COURT: Okay. I suppose if it was no, I'd let you say more.

Mr. Mervis, I hear what you're saying, but I'd like to set a status hearing on October 14th, just another telephone status. You don't have to file anything ahead of it.

MR. MERVIS: Your Honor, that's fine with us. There may be things to talk about on that date, so that's fine with us.

THE COURT: Well, you know, I hesitate to give you a free-for-all but, on the other hand, I want to make sure there are no glitches happening either. That's about 30 days from now. I have something at 9:30 that day. Hold on.

(Brief pause.)

THE COURT: 10:00 a.m. on the 14th, is that okay with counsel, Ms. Hinger?

MS. HINGER: This is Cathy Hinger. Yes, Your Honor.

THE COURT: Mr. Mervis?

MR. MERVIS: Yes, Your Honor.

THE COURT: Mr. Hamill?

MR. HAMILL: Yes, Your Honor.

THE COURT: Okay. Unless there is anything you wanted me to address here, we have a couple of minutes. I do have a hearing scheduled at 11:15. I may have to push you over on the confidentiality order. But anything other than the confidentiality order that anybody wants to address here? Ms. Hinger?

MS. HINGER: Not other than the confidentiality order, Your Honor. Thank you.

THE COURT: Mr. Mervis?

MR. MERVIS: Yes, Your Honor. Very briefly, I'm only raising this so that it's not -- so that it doesn't become a surprise. The joint status report lists for all parties issues that are in dispute but not yet ripe for the Court's attention. Since the report was filed, there is one issue that we believe has become ripe for the Court's intervention. We will certainly give it one more college try with the plaintiffs, but if that's unsuccessful we will proceed to follow the joint discovery motion process that we've talked about today. I just

didn't want that to come as a surprise to the Court.

THE COURT: Okay. Thank you.

I'm hoping that the joint motion process works here. Again, I do find some benefit in it. If it's not working, somebody needs to let me know that and tell me why, and I'm not saying I wouldn't alter that procedure here. I get plenty of motions, responses, replies, but, you know, my experience in reading those is many times people are talking past each other. In the joint process of putting together something jointly, it's less likely that people are going to be talking past each other because they actually see what the other side is saying in real time in that document. You know, but (inaudible) past you (inaudible) either.

Mr. Hamill, anything further from you?

MR. HAMILL: John Hamill speaking. Nothing further, Your Honor. Thank you.

THE COURT: Okay. So as I told you, you didn't give me enough time to look at your confidentiality orders, but can you tell me -- I mean, I can't tell what's really the dispute here. I mean, is it an easy dispute, or is it something -- again, I have folks joining for a motion hearing at 11:15, so we may run out of time. Maybe I'll just need to (inaudible) on this, and I'll set you over to another day next week. But where's the beef? What's going on?

MS. HINGER: Your Honor, this is Cathy Hinger.

MR. MERVIS: Your Honor, I'm happy to --

MS. HINGER: If I may.

MR. MERVIS: Sorry.

THE COURT: Okay. I'll hear from Ms. Hinger first and then from you, Mr. Mervis.

MR. MERVIS: Sure.

MS. HINGER: Your Honor, there are three issues outstanding. They all relate to the highly confidential provision. We've worked everything else out. There's three issues about the highly confidential provision.

Number 1, the defendants want to be able to restrict it to use the term disclosure of the information to non-parties as opposed to disclosure of the information to competitors being part of the definition. The plaintiffs believe that the Global Material Technologies case which we cite in our comments in the last version makes it very clear that an AEO provision is to be very narrowly tailored to protect competitive risk.

The second issue is a date range issue. In the definition of highly confidential, the plaintiffs have added a date range limitation. April 16, 2018, is the date of the consent decree, so we have tried to limit the scope of certain categories that can be designated as highly confidential to April 16, 2018, forward because in the Global Material Technologies case it discusses information that is old as being competitively stale.

Then the third issue is the use of highly confidential information in depositions. The plaintiffs are not seeking restrictions on the use of highly confidential information in depositions, and we have found one new example of a case that has a confidentiality order with similar language that we've proposed.

This is new, Mike, so I'm happy to send you the cite.

We were actually going back and forth with these yesterday, Your Honor. That's why they kind of came in late. We were trying to hammer these out. But it's International Trading versus Illumina, Northern District of Illinois, 1:17-CV-05010 (inaudible) --

THE COURT: Could you slow down? I'm sorry. Can you slow that down? International something?

MS. HINGER: International Equipment Trading versus Illumina, Northern District of Illinois, 1:17-CV-05010. The overarching issue from the plaintiffs' perspective is that the defendants have not -- they are not competitors with our clients. So our clients are not competitors with the defendants.

The defendants provide wireless service. Our clients provide local rural wireline service. So our clients receive wireless calls from T-Mobile, AT&T, Verizon, and they connect them from their switch to the ultimate called party who is our client's customer. We're not offering the same service.

So a lot of the cases that involve AEO provisions involve direct competitors or truly competitive concerns, and we appreciate that Your Honor has noted that the defendants are concerned that our clients do business with their competitors, AT&T and Verizon, but our clients are simply connecting their calls.

So the competitive concerns have not been articulated to us, and we have not had a single document or category of documents that defendants have identified would be responsive to the plaintiffs' outstanding document requests that they are concerned needs an AEO designation. So we're not -- and we don't think that they do because we are looking at a historical business practice that occurred from 2014 predominantly until 2017 when it ended. The consent decree came out in 2018.

So the historical nature of the documents we're seeking as well as the documents relating to an illegal practice, which we think by definition should not have much competitive value, if any, makes it very tenuous that there is a serious concern that there would be a tremendous amount of AEO material here.

So from the plaintiffs' perspective, our case really does not likely involve a tremendous amount of highly competitive information, so we've tried to come up with language that would assuage the defendants' concern. I know they see it differently.

THE COURT: Okay. I was able to follow your argument on the first two points, parties versus competitors, in your red-line of defendants' order and also the date, starting with the date of the consent decree. I'm not able to find in the order -- I mean, I don't know if you're talking about 6(b), disclosure of deposition.

MS. HINGER: Yes.

THE COURT: The little number 2 there. I'm not sure how you're -- hold on for one second.

(Brief pause.)

THE COURT: So in that document I think what you red-lined defendants', your version starts "during their depositions, witnesses in this action to whom the disclosure of HC information is reasonably necessary," right? That's your proposed change?

MS. HINGER: Correct, yeah, section 6(b)(2).

THE COURT: Yeah. I'm not understanding what the difference is between these.

MS. HINGER: So the plaintiffs' language would give us discretion to use a highly confidential document in a deposition with a third party, if there is a third party, who in our good faith we believe is necessary to question about the document and that person has completed the certification to keep it confidential. There's also other protections in here about them not being able to keep the document. The defendants

want to limit our use of highly confidential documents in depositions only to people who are the author or the recipient or were otherwise already privy to the information.

THE COURT: Okay. Got you.

MS. HINGER: As a practical matter -- yeah.

THE COURT: Wait. Sorry. I got you. I reread it as you were talking, and I understand that. So I interrupted you. As a practical matter, what?

MS. HINGER: As a practical matter, the defendants have not identified what competitor or potential third party in this case might be deposed and shown a highly confidential document that might pose a competitive harm to them. So, for example, they raised, well, if you show it to your own clients. Well, the protective order already says an AEO document cannot be shown to the parties, so we're going to follow that court order if that's the court order.

So there's no identification of who the -- most likely, the defendants are going to be the parties that we're deposing about their documents and what they mean. So, again, it's a very remote possibility that there's going to be an issue, and I think especially with the procedures that you're talking about, if there's an issue, we can come to you with a joint status report.

If we decide to depose a third party and the defendants are concerned that there's some category of AEO

documents we might show to that third-party witness in a deposition, we can work through that in a meet-and-confer process as opposed to the plaintiffs having to spend extra time, money, disclosure of work product, and going through the hoops of saying: We're going to depose this witness, and we're going to, you know, ask him these questions. Are you okay? Can we do that?

We don't want to be put in a position where we have to ask the defendants' permission every time we are preparing to address the witness.

THE COURT: Okay. I know the people in Perez versus K&B Transport are on the line. Bear with me a little bit. I'm going to bring this to a close pretty quickly.

I know, Mr. Mervis, that defendants -- I believe and you can confirm this for me, but defendants' position is that you disagree with Ms. Hinger that her clients are not necessarily competitors of yours in certain ways. You characterized it, I believe, in an earlier status report that, you know, you both service customers who want to place calls online. She doesn't look at it that way. Not online but, you know, place long distance calls, rural calls. So I get that you disagree with her characterization of this.

Is there a way -- I think I'm going to actually reset you here because I have to look at this stuff more closely, but is there a way for you to very succinctly respond to the

parties versus competitors? I mean, they want to limit it to competitors, or you want to limit it to -- I'm sorry. They want to limit it to competitors, and you want to say non-parties, right?

MR. MERVIS: Yes, sir.

THE COURT: And your reason for that is?

MR. MERVIS: Your Honor, it's Mike Mervis. I know you're pressed for time. Let me try to be really succinct, but I do think I need to frame a couple of things. The first is that a lot of the concern that we've heard from the plaintiffs during the meet-and-confer is that we're going to overdesignate. We've read Your Honor's order. We understand Your Honor's thinking. We do not think that is going to be an issue, so that's number 1. The second --

THE COURT: Okay. Let me interrupt you because you're not going to get this transcribed if you want it. You're feint again, so just speak more into the phone.

MR. MERVIS: Oh, I'm sorry. So what I said was a lot of the concerns that have been expressed by the plaintiffs about these wording changes are based on the concern that T-Mobile is going to overuse the AEO designation, and what I wanted to convey is that we do not intend to do that. We've read Your Honor's order. We understand the potential implications. So that's point 1.

Point 2 is I think that the scope of what will be

designated AEO here is going to be actually very narrow, but let me give you a couple of potential examples. One would be technical documents, in other words, material that might well qualify as trade secret because they're showing, for example, how calls are routed or what algorithms are used and that sort of thing.

THE COURT: I'm going to interrupt you. I'm going to interrupt you.

MR. MERVIS: Yes.

THE COURT: I read that portion of your joint status report where you gave me a list of the types of things that would be designated as AEO, so I understand your position is it's going to be quite narrow. The devil will be in the details. I want everybody to know that my AEO ruling, the attorneys' eyes only ruling in the order that I issued previously was based on the high level in which the parties addressed this stuff.

Plaintiffs' position was there can never be any situation here that allows for an AEO designation. The parties aren't competitors. The law in the Seventh Circuit restricts this. Defendants said: We're not trying to be overburdensome, but there's some stuff we think we should designate as AEO.

I looked at it and said I can't say that there can be no AEO here. I tried to shoot something over the bough that said if it's over-designated defendants will have to pay for

the challenges. Whether before we even get to that plaintiffs will raise that, I don't know what is AEO or not. I don't know, you know, if Mr. Mervis does what he -- in your joint status report where you identified -- I'm sorry. It's the joint motion to resolve discovery disputes, I think, where you identified things that you felt were AEO. I agreed that some of them were, and I'm not sure others were, either. So we'll deal with this.

Plaintiffs want the additional level here of that the materials can't be disclosed to a competitor. That requires some type of a subjective determination in some respects as to who's a competitor.

MR. MERVIS: It does.

THE COURT: So I'm a little leery about that given, you know, your inability to agree on anything. You want it to be that highly confidential can't be disclosed to other parties in the litigation or some non-party. Very broad, competitors, but the janitor in some company, too, right?

MR. MERVIS: Not necessarily the janitor, Your Honor, but let me answer the question. First of all, the provision we're looking at, which is provision 2(b), 2(b), this is a non-exhaustive illustrative list of things that can be but aren't necessarily highly confidential.

But there's two reasons why we think a non-party is appropriate, and it's set forth is in the draft changes

comments that we've provided. There's actually more than two, but let me focus on the two. One is --

THE COURT: No, no, no, no, no, no. If it's set forth in the draft comment changes, I'll read them. We're going to be out of time here. We're going to be out of time.

MR. MERVIS: Well, Your Honor, all of our positions are set forth in the draft changes comments.

THE COURT: Okay.

MR. MERVIS: So I don't mean to take up the Court's time with what's in the comments.

THE COURT: No, we're good. We're good. I'm going to set you for -- hold on. I had chosen a date, and now it's not coming up on my computer. I had written down October -- not October, September 21st, next week, at 10:30 to resolve these particular issues. Are you or are all the team who need to be here available on that date and time?

MR. MERVIS: Yes, Your Honor.

MS. HINGER: We can be here.

MR. MERVIS: This is Michael Mervis. We will have appropriate counsel for T-Mobile available at that time.

THE COURT: Ms. Hinger?

MS. HINGER: This is Cathy Hinger. Plaintiff can be available.

THE COURT: Mr. Hamill?

MR. HAMILL: John Hamill speaking. Yes, Your Honor.

THE COURT: Okay. Let's just continue this discussion until then. We may not have to have any more discussion. I'll have the -- I understand, you know, Ms. Hinger had a chance to say her piece. She gave me at least a flavor.

Ms. Hinger, will you send to everybody and copy my courtroom deputy whatever you want to send from case number 17-5010, the International Equipment versus Illumina case? If there's, you know, a confidential order in that case that has the language you're proposing, will you send it to the other side as well as to Brenda Rinozzi so that I could look at it?

MS. HINGER: Yes, Your Honor.

THE COURT: Okay. Then we'll pick this up, if necessary, on the 21st. If for some reason I get to this ahead of time and I can give you a ruling on paper, we won't get together on the 21st, but otherwise we have a date for me to resolve these issues, to get the confidentiality order entered and document production going. I realize that's a week later, and I appreciate your telling me you were trying to resolve all this stuff up to the last minute but that didn't help. So all good. I'm going to break here.

MR. MERVIS: Your Honor, I apologize.

THE COURT: Go ahead.

MR. MERVIS: Just one more question if I could. Both parties have cited prior protective orders in court, including the one that Ms. Hinger mentioned today for the first time.

Would it be helpful to chambers if all parties provided copies of all those protective orders as opposed to just the one that Ms. Hinger responded -- raised for the first time today?

THE COURT: You know, I don't know. I mean, if you cited these prior, I saw some of them in the joint motion. No, I don't want you to inundate me with stuff. If I want stuff, I'll ask for it. But if you cite it, I don't know that I need to look at all the orders. Some of this is what I would do in a case pending in front of me, and I'm more familiar with these issues. So I don't think I need more paper from you. You know, there's plenty of paper in the case. If I need anything from you, Brenda will be in contact or I'll be in contact, but we just need to get this thing done and move forward. So the answer is no. Thank you for the offer, but if I need it I'll ask you or I'll look at the case myself on CM/ECF. Okay?

MR. MERVIS: Thank you, Your Honor.

THE COURT: Okay. Talk to you next week. Bye-bye.

(Proceedings concluded.)

C E R T I F I C A T E

I, Patrick J. Mullen, do hereby certify the foregoing is an accurate transcript produced from an audio recording of the proceedings had in the above-entitled case before the Honorable JEFFREY T. GILBERT, one of the magistrate judges of said Court, at Chicago, Illinois, on September 15, 2021.

/s/ Patrick J. Mullen
Official Court Reporter
United States District Court
Northern District of Illinois
Eastern Division